CONCLUSION

For the foregoing reason it is respectfully requested that the petition for certiorari be denied.

Respectfully submitted,

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July 11, 1961

SUPREME COURT, U. S.

JUN 27 1961

JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. [redacted] 149

SUN OIL COMPANY,

Petitioner.

v.

THE UNITED GAS IMPROVEMENT COMPANY AND PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR RESPONDENT PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK IN OPPOSITION.

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Statutes.

Natural Gas Act,

Section 7 1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960.

No. 1035.

SUN OIL COMPANY,

Petitioner,

v.

THE UNITED GAS IMPROVEMENT COMPANY AND PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR RESPONDENT PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK IN OPPOSITION.

Question Presented.

In the light of decisions by this Court in *Catco*[1] and *Transco-Seaboard*,[2] did the Court below err in setting aside an August 10, 1959 unconditional certificate of public convenience and necessity issued to petitioner by the Federal Power Commission under Section 7 of the Natural Gas

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[1] *Atlantic Refining Co.* v. *Public Service Commission*, 360 U. S. 378 (June 22, 1959).

[2] *Public Service Commission* v. *Federal Power Commission*, 361 U. S. 195 (December 14, 1959).

Act, for sales from a southern Louisiana field at an initial price of 23.8¢ per Mcf, when

1. the record before the Commission did not contain the supporting evidence of price propriety which *Catco* requires for an unconditional certification at this price level, *and*

2. the Commission had not even instituted the proceedings, in compliance with this Court's *Catco* and *Transco-Seaboard* remand orders, wherein it was adjured to question the propriety of their price levels (21.4¢-23.55¢ per Mcf) and, in the absence of evidence to support them, to condition the certificates at a non-suspect, lower price line?

Statement of the Case.

The instant petition for a writ of certiorari is the sixth and, of necessity, the last in a series of related requests for review of five related decisions issued this term by four Courts of Appeal. Its predecessors and counterparts were Nos. 774, 776, 780 and 793, in which certiorari was denied by order of this Court dated April 17, 1961 and No. 1005, in which certiorari was denied by order dated June 19, 1961.[3]

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[3] The five cases are:

a. *Texas Gas Transmission Corp., et al.*, 22 F. P. C. 378, rev'd *Pub Serv. Comm.* v. *Fed. Power Comm.*, 287 F. 2d 146 (D. C. Cir. 1960), cert. den. *Hope Nat. Gas Co.* v. *Pub. Serv. Comm.*, 365 U. S. 880 (No. 793) and *Shell Oil Co.* v. *Pub. Serv. Comm.*, 365 U. S. 882 (No. 774) (1961).

b. *The California Co., et al.*, 22 F. P. C. 252, rev'd *U. G. I.* v. *F. P. C.*, 283 F. 2d 817 (9th Cir. 1960) cert. den. *Superior Oil Co.* v. *U. G. I.*, 365 U. S. 879 (No. 780) and *California Co.* v. *U. G. I.*, 365 U. S. 881 (No. 776) (1961).

c. *The Superior Oil Co.*, 22 F. P. C. 369, rev'd *U. G. I.* v. *F. P. C.*, 5th Cir. No. 18113 (February 22, 1961), No. 1005, cert. den. June 19, 1961.

The order of the FPC reversed by the Court of Appeals decision here the subject of an application for review, was issued on August 10, 1959, as were each of the orders involved in the above-numbered petitions. As in the other cases, the underlying FPC proceeding concerned applications for certificates of public convenience and necessity under Section 7(c) of the Natural Gas Act. In this proceeding petitioner sought and obtained FPC authorization for a sale of natural gas in interstate commerce from southern Louisiana at an initial price of 23.8¢ per Mcf, the highest of the initial prices certificated by the Commission in its series of August 10 orders.

The hearing before the Commission on petitioner's application began and ended on January 27, 1959. The proceeding originally had been scheduled for earlier disposition under Section 1.32 of the Commission's Rules of Practice and Procedure providing for "shortened procedures" where "no issue of substance is raised." Intervenor protests, however, necessitated the later "full" hearing. The Presiding Examiner's intermediate decision was issued on March 3, 1959. Both the record of the hearing and the decision of the Examiner reflect adherence to and application of the then prevailing, pre-*Catco*, automatic-*prima-facie*-case-in-favor-of-any-initial-price-demanded FPC producer certificate philosophy.

On June 22, 1959, however, that philosophy, along with the 21¢-24¢ southern Louisiana initial price level it had engendered, were thoroughly dispelled by this Court's decision in the *Catco* case. But on August 4, 1959, the

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d. *Sunray Mid-Continent Oil Co.*, 22 F. P. C. 361, rev'd, *U. G. I.* v. *F. P. C.*, 287 F. 2d 159 (10th Cir., 1961).

e. *Sun Oil Corp.*, 22 F. P. C. 351, rev'd *U. G. I.* v. *F. P. C.*, 5th Cir., No. 18112 (February 22, 1961) (the instant case).

21¢-24¢ initial price line, if not the regulatory philosophy which had produced it, appeared to receive a renewed imprimatur of propriety as a result of the Third Circuit's affirmance of the Commission's *Transco-Seaboard* decision.[4]

With that inspiration, the Commission promptly (on August 10, 1959) released decisions in five of its pending southern Louisiana high producer initial price proceedings, including the instant one, in which hearings had been completed and intermediate decisions had been issued prior to June 22 (*Catco* Day). In each, the Commission affirmed the intermediate decision and certificated sales at initial price levels up to 23.8¢ per Mcf (in this case) upon records as deficient in justification for such prices as had been the Catco record for its initial prices of 22.4¢ per Mcf.

Each of the Commission's five August 10 certificate decisions was appealed by the Public Service Commission of the State of New York (intervenor-petitioner below) or by the United Gas Improvement Company. Each was reversed by the reviewing Court. Three of the five related Court of Appeals decisions have been the subjects of petitions for certiorari heretofore. Petitions in two were denied by the Court on April 17, 1961. The petition in the third was denied on June 19, 1961. Time for filing a petition has expired in the fourth. And the instant petition, in the fifth, represents the last in this series of endeavors by producers to persuade this Court to annul the producer regulatory principles set forth in its *Catco* decision of June 22, 1959, reemphasized in its *Transco Seaboard* decision of December 14, 1959 and reiterated, unanimously, by four United States Courts of Appeal in the decision below and others issued during 1960-61.

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[4] *United Gas Improvement Company* v. *Federal Power Commission*, 269 F. 2d 865.

Reason For Denying The Writ.

The facts in this case are virtually identical with those recently before the Court in *California Company* v. *U. G. I.* and *Superior Oil Company* v. *U. G. I.*, Nos. 776 and 780, this term.[5] The gas purchaser in each of the underlying FPC proceedings was the same interstate pipeline company; the area of the sale was the same; and the proposed initial price, 23.8¢ per Mcf, was the same. Indeed, the FPC order involved in the earlier case expressly recites that that proceeding was a "companion" to the one here in issue. See *The California Company, et al.*, Docket G-16108, *et al.*, 22 F. P. C. 252, at p. 253.

In addition, the record herein is substantially the same as those before the Court below and three other Courts of Appeal on review of the Commission's four companion decisions of August 10, 1959.

Finally, the reasons advanced in this petition for the granting of the writ are substantially the same as those advanced in the related petitions filed in Nos. 774, 776, 780, 793 and 1005.

The Public Service Commission respectfully submits that the decision below, on its face, is in accord with and furthers the objectives of this Court's decisions and orders of remand in the *Catco* and *Transco-Seaboard* cases. We believe further, that the contentions raised by the instant petition have been disposed of by the Court's orders of April 17, and June 19, 1961 denying analogous petitions

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[5] Ninth Circuit case; see footnote 3(b), *supra*.